

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA	*
	*
V	*
	*
BRIAN FOLKS	*
MANDY LATULIPPE	* CRIMINAL FILE NO. 16-94

DETENTION HEARING
Monday, July 25, 2016
Burlington, Vermont

BEFORE:

THE HONORABLE JOHN M. CONROY
Magistrate Judge

APPEARANCES:

HEATHER E. ROSS, ESQ., Assistant United States
Attorney, Federal Building, Burlington, Vermont;
Attorney for the United States

MICHAEL J. STRAUB, ESQ., Law Office of Michael J.
Straub, 19 Church Street, Suite 9, Burlington,
Vermont; Attorney for Defendant Folks

KATINA FRANCIS READY, ESQ., 16B Main Street,
Bristol, Vermont; Attorney for Defendant
Latulippe

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I N D E X

E X A M I N A T I O N

WITNESS NAME	PAGE	LINE
CHRISTOPHER DESTITO		
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1 MONDAY, JULY 25, 2016

2 (The following was held in open court at 11:00 a.m.)

3 COURTROOM DEPUTY: Your Honor, the matter
4 before the Court this morning is criminal action
5 16-CR-94, United States of America versus Brian Folks,
6 who is present in the courtroom today represented by
7 attorney Michael Straub, and Mandy Latulippe, who is
8 also present in the courtroom represented by attorney
9 Katina Francis Ready. Representing the government this
10 morning is Assistant United States Attorney Heather
11 Ross. And we are here for the purpose of a detention
12 hearing.

13 THE COURT: Good morning.

14 MS. ROSS: Good morning, your Honor.

15 MR. STRAUB: Good morning.

16 MS. READY: Good morning.

17 THE COURT: We are here as the clerk indicated
18 to consider the government's motions for pretrial
19 detention with respect to defendant Folks and defendant
20 Latulippe. Does either side intend to present any
21 evidence? Miss Ross?

22 MS. ROSS: The government may present evidence
23 in the matter of Brian Folks depending on the proof that
24 the defense may offer to meet the rebuttal presumption.

25 THE COURT: Okay. Does Mr. Folks intend to

1 present any evidence or rely on the information set
2 forth in the pretrial services report?

3 MR. STRAUB: We will be relying on the
4 information in the pretrial services report, Judge.

5 THE COURT: Okay. And with respect to
6 defendant Latulippe, any evidence to present or do
7 you -- will you be relying on the report of the pretrial
8 service agency?

9 MS. READY: We would be relying on the report,
10 Judge, but I am also relying on the government's
11 representation the last time we were here, last week.

12 Mr. Van de Graaf said that he would be inclined to
13 recommend release but he was waiting to receive a final
14 copy of the pretrial services report. So I am going on
15 the understanding that that would be the government's
16 recommendation at this time.

17 THE COURT: Okay. Miss Ross, what's the
18 government's recommendation position on Miss Latulippe?

19 MS. ROSS: The government's position is as
20 Miss Ready represented. We do not intend to move
21 forward with detention with respect to Miss Latulippe.

22 THE COURT: Okay. So document number eight,
23 the government's motion for detention in the matter of
24 United States of America versus Mandy Latulippe, is
25 denied as moot.

1 Does the government have any comments or concerns
2 about the conditions that have been proposed with
3 respect to Miss Latulippe?

4 MS. ROSS: We do not, your Honor.

5 THE COURT: Miss Ready?

6 MS. READY: My client's fine with all the
7 conditions, Judge.

8 THE COURT: Okay. Miss Latulippe, would you
9 please stand.

10 Miss Latulippe, in connection with this matter I am
11 going to be signing an order setting conditions of
12 release. And at this time I am going to explain those
13 conditions to you, that everything I am about to tell
14 you is set forth in a three-page order which you will
15 receive a copy of at the conclusion of today's hearing.

16 You are going to be released on your own personal
17 recognizance which means you are promising to appear in
18 court when required to do so and to surrender to serve
19 any sentence that may be imposed in this matter. While
20 out on release, you will be subject to the following
21 general conditions:

22 You must not violate any federal, state or local
23 law. You must cooperate in the collection of a DNA
24 sample if collection is authorized under federal law.
25 You must immediately advise the court, your attorney and

1 the U.S. Attorney in writing before you change your
2 residence or your telephone number. And again, you must
3 appear in court as required, and you must surrender to
4 serve any sentence that may be imposed.

5 Miss Latulippe, in addition to those general
6 conditions, I am going to impose the following specific
7 conditions:

8 You will be required to report to the United States
9 pretrial service office as directed. You are to
10 maintain or actively seek employment. You are to abide
11 by the following restrictions on your personal
12 association, your residence or your travel. Those
13 restrictions are as follows:

14 Your travel is restricted to the state of Vermont
15 and any other travel that may be approved in advance by
16 the pretrial service office.

17 You are to avoid all contact, directly or
18 indirectly, with any person who is or may become a
19 victim or potential witness in the investigation or
20 prosecution, including the individuals identified by the
21 government as witnesses in the case, as well as the
22 co-defendants in this indictment.

23 You are to refrain from possessing a firearm,
24 destructive device or other dangerous weapon.

25 You are to refrain from the use or unlawful

1 possession of a narcotic drug or other controlled
2 substance as defined in 21 USC, section 802 unless that
3 substance is prescribed to you by a licensed medical
4 practitioner.

5 Mr. Bendzunas, I didn't see a drug testing
6 requirement; is that -- that should have been included?

7 PROBATION OFFICER JOHN BENDZUNAS: Miss
8 Latulippe is currently on probation with the state and
9 she is subject to a drug testing. We did not select
10 that condition for our purposes since we found no
11 evidence of a substance abuse issue.

12 THE COURT: Okay. Miss Latulippe, you are to
13 report as soon as possible to the pretrial service
14 office or supervising officer any contact you have with
15 law enforcement personnel, including but not limited to
16 any arrest, any questioning or even a traffic stop.

17 You are to maintain contact with your attorney, and
18 you are to abide by all conditions of probation under
19 the State of Vermont criminal case docket number
20 1287-415CNCR.

21 Miss Latulippe, do you understand these conditions?

22 DEFENDANT LATULIPPE: Yes.

23 THE COURT: Do you have any questions of me?

24 DEFENDANT LATULIPPE: No.

25 THE COURT: Okay. Miss Latulippe, the law

1 requires me to advise you of the penalties and sanctions
2 that would arise in the event you violated these release
3 conditions, so I will advise you as follows:

4 Violating any of the foregoing conditions of
5 release may result in immediate issuance of a warrant
6 for your arrest, revocation of your release, an order of
7 detention, a forfeiture of any bond and a prosecution
8 for contempt of court and could result in imprisonment,
9 a fine or both. While on release, if you commit a
10 federal felony offense, the punishment is an additional
11 prison term of not more than 10 years, and for a federal
12 misdemeanor offense, the punishment is an additional
13 prison term of not more than one year. The sentence
14 must be consecutive, meaning in addition to, any other
15 sentence you may receive.

16 Miss Latulippe, it is a crime punishable by up to
17 10 years' in imprisonment, a \$250,000 fine or both to
18 obstruct a criminal investigation, to tamper with a
19 witness, victim or informant, to retaliate or attempt to
20 retaliate against a witness, victim or informant, to
21 intimidate or attempt to intimidate a witness, victim,
22 juror, informant or officer of the court; and, Miss
23 Latulippe, these penalties for tampering, retaliation or
24 intimidation is significantly more serious if the
25 conduct involves a killing or an attempted killing.

1 If, after release, Miss Latulippe, you knowingly
2 fail to appear as these conditions of release require or
3 to surrender to serve a sentence, you may be prosecuted
4 for failing to appear or surrender. An additional
5 punishment may be imposed. And, in fact, there is a
6 schedule of additional punishment set forth on page
7 three of this order setting conditions of release, and I
8 call your attention to that page. But a term of
9 imprisonment imposed for failing to appear or surrender
10 will be consecutive to any other sentence you may
11 receive.

12 Now, you will have to meet with the deputy clerk
13 who sits in front of me and sign an acknowledgment of
14 these conditions.

15 One last time, Miss Latulippe, do you have any
16 questions of me?

17 DEFENDANT LATULIPPE: No.

18 THE COURT: I can't hear you.

19 DEFENDANT LATULIPPE: No.

20 THE COURT: Okay. With regard to directions
21 to the United States Marshal, Miss Latulippe is ordered
22 released at the conclusion of any necessary processing.

23 Okay, let's take up the matter of Mr. Folks now.

24 The grand jury's finding of probable cause gives
25 rise to a presumption under the law that there is no

1 condition or combination of conditions the Court could
2 set to reasonably assure either Mr. Folks's continued
3 appearance here in court or the safety of the community.
4 That presumption shifts the burden on Mr. Latulippe
5 [sic]. It is a limited burden of production to come
6 forward with evidence that contradicts that notion of
7 dangerousness or risk of flight.

8 From Mr. Straub, I will hear you on this motion.

9 MR. STRAUB: Thank you, Judge.

10 Judge, I think the pretrial services report sums it
11 up best in that there are conditions of release that
12 would assure his appearance and the safety of the
13 community as outlined in the attachment to the report.

14 I'd ask the Court to consider that contrary to
15 what's represented in the government's motion for
16 detention at page three, that the defendant did not
17 commit the charged conspiracy while on pretrial release
18 for a state violent felony. From what I can tell, that
19 must be referring to a charge of aggravated sexual
20 assault in 2014, but Mr. Folks was detained during that
21 period of time, so the government's assertion is
22 inaccurate.

23 THE COURT: Would you say that again for me?

24 For --

25 MR. STRAUB: So that on page four, I think --

1 five of the pretrial services report, the top --

2 THE COURT: Yes.

3 MR. STRAUB: -- box, the charge there --

4 THE COURT: Yes.

5 MR. STRAUB: -- I believe is sexual assault.

6 THE COURT: Yes.

7 MR. STRAUB: Between September of 2014 and
8 February of 2015, which appears to encompass -- well,
9 this is where it gets confusing to me. He was detained
10 during that period of time. The disorderly conduct for
11 fighting I don't believe can be characterized as a
12 violent offense -- violent felony, certainly not a
13 felony. And the grand larceny greater than 900,
14 perhaps, you know, it's -- wasn't a violent felony in
15 state court. I don't know why the government then is
16 alleging that -- on their motion that he committed the
17 conspiracy while on pretrial release for a state violent
18 felony. So --

19 THE COURT: Mr. Straub, let me interrupt you
20 for a moment. I too was confused by that statement, and
21 I recognize that the government didn't have the pretrial
22 services report at the time it drafted its motion.

23 Miss Ross, can you clarify what the assertion is
24 with respect to that?

25 MS. ROSS: My understanding is that in the

1 summer of 2015, Mr. Folks was, in fact, on release for
2 both the disorderly conduct and the grand larceny
3 greater than \$900 state charges, and the conspiracy
4 charge as returned by the grand jury reflects that he
5 was engaged in this drug conspiracy beginning in May
6 2015 and continuing until March 2016, so that while on
7 court-imposed conditions from the state court, he was
8 continuing to commit crimes.

9 THE COURT: I think Mr. Straub was focusing
10 his argument on the representation that Mr. Folks was
11 out on pretrial release for a state violent felony, and
12 that's -- that's where I was confused as well.

13 MS. ROSS: Your Honor, I can't -- as I am not
14 the author of the detention motion, I cannot speak to
15 why the -- you know, the characterization of it as being
16 violent.

17 THE COURT: Okay. Yes. And I realize these
18 are written in haste and before the pretrial services
19 report was issued, but I think Mr. Straub is correct in
20 his argument that it wasn't a violent felony that
21 Mr. Folks was out on release for; is that -- is that
22 your argument?

23 MR. STRAUB: That's correct.

24 MS. ROSS: In the summer --

25 THE COURT: Yes.

1 MS. ROSS: In the summer of 2015?

2 THE COURT: Yes.

3 MS. ROSS: I would agree with that,
4 your Honor.

5 THE COURT: Okay. All right.

6 MR. STRAUB: Judge, we would also dispute the
7 characterization that defendant stated that he acted as
8 muscle against drug traffickers in furtherance of the
9 conspiracy. I don't have access to a DEA report on the
10 interview of the defendant at this time, so I don't know
11 exactly what the government is paraphrasing there, but I
12 don't believe that that is what was said to law
13 enforcement. And furthermore, my client's physical
14 condition is such that he is not able to behave in that
15 way.

16 He is in a wheelchair today as the result, it
17 seems, of a worsening medical condition. He was able to
18 walk into the courtroom just -- because your Honor
19 wasn't here, I think it's fair to note that when we were
20 here last week, he was able to walk into the courtroom
21 and walk on out, and has informed pretrial services, and
22 I think we mentioned it to Judge Reiss, that -- last
23 week, he was shot in the back a little over a couple
24 years ago. He was in a wheelchair for quite a long time
25 and worked his way through braces and canes and is able

1 to walk for, you know, short distances, usually down to
2 the corner store, as he said it. If he is going to go
3 on a long trek, he would bring along a cane. However,
4 his condition has worsened over the last few days while
5 incarcerated.

6 Mr. Folks describes that he did get a medical
7 evaluation when he arrived at the jail and discussed
8 with them his dietary needs, said he has a condition
9 that prohibits his consumption of meat and he sticks to
10 a vegetarian diet when he has choice, but that was not
11 able to be provided to him at the jail over the weekend
12 even though they seemed -- Mr. Folks tells me that they
13 found in his prior detention records some notes that he
14 had been provided a vegetarian diet by the Vermont
15 Department of Corrections in the past. They weren't
16 able to get that into place, I imagine, in the short
17 period of time that he has been there. So he has not
18 eaten much in the last few days and that contributed to
19 a weakened state in terms of his ability to stand.

20 He describes getting -- attempting to get out of
21 bed in the middle of the night but falling out of his
22 bunk, striking his head on the plumbing fixtures that
23 are in the cell, and requiring stitches within his
24 mouth, giving him some bumps in about his head. And
25 because of his weakened condition, it seems the marshals

1 have provided him with a wheelchair for much of his
2 transport here today.

3 So his medical condition, we would argue, would
4 also militate in favor of his release where he would
5 intend to reside at home with his wife and his children,
6 who he has been with -- living with at the time of his
7 arrest. He is integral to the family's support in terms
8 of receiving Social Security. That would, I believe,
9 terminate after some period of time in jail, 30 or 60
10 days, I can't be certain, but that would discontinue at
11 some point if he was not in the community.

12 We'd ask the Court to consider that this Court
13 often releases individuals with these types of charges
14 into the community, that obviously the charge
15 Mr. Folks -- that Mr. Folks was convicted of in '92,
16 terribly serious, is a manslaughter charge, but he was
17 under the age of 18 at that time.

18 As represented to the probation office, he did
19 experience some parole violations, but those were due
20 to a -- well, misguided or mistaken, in a legal sense,
21 effort to see his children in Vermont, that he was bound
22 they would find him at his children's home here in
23 Vermont, and he was, you know, returned to custody.
24 That relates to the fugitive from justice charge, we
25 believe, in January of 2012, on page four of the report.

1 We'd ask the Court to consider that he does not
2 have a drug problem. He had a negative UA, all
3 substances, and can be relied upon to appear when
4 necessary at court.

5 The probation office does not report any failures
6 to appear, I believe, in any of his state proceedings,
7 and therefore, we'd ask the Court to consider that he
8 can be released on the conditions recommended by the
9 probation office.

10 THE COURT: Okay.

11 PROBATION OFFICER BENDZUNAS: Judge?

12 THE COURT: Yes.

13 PROBATION OFFICER BENDZUNAS: There is one
14 failure to appear that occurred in September 26th of
15 2006, most likely a failure to {unintelligible}.

16 MR. STRAUB: Thank you.

17 THE COURT: Is that in the report? I'm sorry.

18 PROBATION OFFICER BENDZUNAS: Yes. Yes, it
19 is, your Honor.

20 THE COURT: I see it.

21 MR. STRAUB: Pardon my oversight, your Honor.

22 THE COURT: Yes.

23 Okay. Miss Ross, before I hear your argument, let
24 me inquire, is the government moving on both risk of
25 flight and danger to the community or only one prong?

1 MS. ROSS: Your Honor, it is moving both on
2 risk of flight and danger to the community.

3 THE COURT: Okay. All right. I will hear
4 you.

5 MS. ROSS: Thank you, your Honor.

6 In light of the statements made by defense counsel,
7 the government does intend to call witnesses and produce
8 evidence.

9 THE COURT: Okay. Have you complied with the
10 Jencks Act responsibilities?

11 MS. ROSS: I have copies of the statements
12 which we are going to introduce, so -- for defense
13 counsel.

14 THE COURT: So Mr. Straub hasn't seen them as
15 yet?

16 MS. ROSS: Correct.

17 THE COURT: Okay. All right. Why don't we
18 take a brief recess to permit Mr. Straub an opportunity
19 to review these documents. Meanwhile, Miss Latulippe
20 can execute the release documents and be excused.

21 Mr. Jarvis, you --

22 (Brief pause.)

23 THE COURT: So I have an arraignment at 11:30
24 which should not take a very long period of time. Why
25 don't we go forward and conduct that 11:30 arraignment.

1 That would give Mr. Straub an opportunity to review the
2 Jencks material.

3 MS. ROSS: Thank you, your Honor.

4 THE COURT: So we will stand in recess.

5 (Court was in recess at 11:26 a.m.)

6 (The following was held in open court at 12:10 p.m.)

7 COURTROOM DEPUTY: Your Honor, the matter
8 before the Court is a continuation of 16-CR-94, United
9 States of America versus Brian Folks, who is represented
10 by attorney Michael Straub, and Assistant United States
11 Attorney Heather Ross is appearing again for the
12 government.

13 THE COURT: Okay. It's 12:10. Mr. Straub, I
14 am just curious about your client's state. Has he had
15 any nourishment since breakfast? Is he okay? He can
16 proceed at this time?

17 MR. STRAUB: Judge, he had a small breakfast,
18 I don't believe any lunch. He seems comfortable
19 proceeding for, you know, another hour here --

20 THE COURT: Okay. All right.

21 MR. STRAUB: -- or whatever it takes.

22 THE COURT: Okay. Good. All right.

23 MR. STRAUB: Thank you.

24 THE COURT: Miss Ross?

25 MS. ROSS: Thank you, your Honor. The

1 government calls Agent Destito.

2 CHRISTOPHER DESTITO,

3 having been duly sworn by the courtroom deputy,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. ROSS:

7 Q Good afternoon.

8 A Good afternoon.

9 Q Just for purposes of the record, will you please
10 identify yourself and state what you do.

11 A My name's Christopher Destito. I am a special
12 agent with the Federal Bureau of Investigation. I have
13 been so for 19 and a half years. I have been assigned
14 to the Burlington office that whole time.

15 Initially when I came here, I worked white-collar
16 crime, reactive crime, and then had a period of time
17 where I was assigned to the drug task force, the DEA
18 Drug Task Force. And after 9/11, I've worked terrorism
19 for approximately 12 years. And then 2012 I was
20 reassigned to work gang investigations in the state,
21 which kind of falls under drug trafficking, weapons
22 trafficking, and prostitution.

23 Q Thank you.

24 Now, Agent Destito, did you -- have you recently
25 been assigned to investigate a matter involving the

1 defendant, Brian Folks?

2 A I have.

3 Q And in the course of your investigation, have you
4 had an opportunity to review a report that deals with
5 some conduct of Mr. Folks on December 25th, 2015?

6 A I have.

7 Q And would you please describe for the Court what it
8 is you learned from reviewing that report.

9 A December 25th, the evening of December 25th,
10 approximately 10:30, Mr. Folks was driving a Dodge
11 Durango --

12 MR. STRAUB: Objection. Hearsay.

13 THE COURT: Hearsay is permissible in these
14 proceedings, so overruled.

15 MR. STRAUB: Thank you, Judge.

16 A Was driving a Dodge Durango and was stopped for a
17 traffic violation. I believe, and I might be wrong
18 here, I think the taillights were out on the vehicle.

19 When officers approached the vehicle, they spoke
20 with Mr. Folks. The officer I believe was Officer Bolio
21 from Essex [*sic*], and he was aware of Mr. Folks from
22 previous dealings, and Mr. Folks was, I think,
23 criminally suspended at the time of the stop, and
24 advised the vehicle was registered to someone else, Miss
25 Crawford, I believe it was. And when asked about that,

1 he advised that he was on the way to the airport. He
2 had to get a flight the next morning. And through the
3 course of this stop, they -- they -- the officers that
4 did the stop ran a K-9 by the vehicle, and the dog
5 alerted to the vehicle.

6 They got a search warrant to search the vehicle,
7 and when they searched the vehicle, they found a nine
8 millimeter handgun in the glove compartment.

9 The vehicle was registered to Miss Crawford, I
10 believe, and when they spoke with Miss Crawford, they
11 asked consent to search the vehicle, and she denied
12 consent, so they got the warrant. But when speaking
13 with Miss Crawford, she said that the vehicle was
14 Mr. Folks'. He asked her to register it in her name.
15 At the time of the stop, Mr. Folks was the only one in
16 the vehicle.

17 BY MS. ROSS:

18 Q That's what I was going to ask you so you just
19 answered that -- the question of who was in the vehicle
20 at the time of the stop.

21 THE COURT: Could you ask the question who was
22 in the vehicle? I didn't --

23 MS. ROSS: Yes.

24 THE COURT: Thank you.

25 BY MS. ROSS:

1 Q Who was in the vehicle at the time of the stop?

2 A Mr. Folks was the only one in the vehicle.

3 Q He was the lone occupant, correct?

4 A Yes.

5 Q Now, did the presence of a handgun in the vehicle
6 have any significance to you as an agent, given what you
7 know about Mr. Folks' criminal history?

8 A Yes. Mr. Folks is not allowed to have a weapon per
9 his previous conviction.

10 Q Now, Agent Destito, you had an opportunity last
11 week to interview Cassandra Folks; is that correct?

12 A Yes.

13 Q And who is Cassandra Folks?

14 A That's Mr. Folks' wife.

15 Q And when you spoke with Miss Folks, how did she
16 describe the -- the current living conditions with
17 respect to her and Mr. Folks?

18 A Mrs. Folks was dealing with her children and one of
19 Mr. Folks' kids and is working a job trying to maintain
20 the household and, quite frankly, it's difficult.
21 There's, I believe, six children, and she had a lot on
22 her plate, and it was -- you know, it's a difficult
23 situation. And she advised that in March of this past
24 year, her and Mr. Folks had an altercation -- not an
25 altercation. They -- a disagreement, and -- because of

1 Mr. Folks' infidelity and the fact that he continues to
2 sleep with various women, and so Mrs. Folks kicked him
3 out of the house. And she has been trying to resurrect
4 that relationship but hasn't been able to because of
5 Mr. Folks' inability to put aside that lifestyle that
6 she was asking him to do so.

7 So when we spoke with her, he was not living at the
8 house. He hasn't been living at the house. He had been
9 gone since March. He does come back. He does try to
10 see his kids. And so it's not like he has disappeared,
11 but she doesn't know where he is living and where he --
12 or where he has been living. But their relationship,
13 again, not -- at that time when we spoke with her prior
14 to Mr. Folks' arrest -- a good situation by any means
15 because, again, Mr. Folks's inability to be faithful.

16 Q And when is it that you spoke with Mrs. Folks,
17 Cassandra Folks?

18 A On the day of Mr. Folks' arrest.

19 Q And if I am correct, was that Tuesday of last week?

20 A Tuesday.

21 Q Now, what, if anything, did Mrs. Folks say about
22 the level of financial support she was getting from
23 Mr. Folks?

24 A Mrs. Folks at that time was behind on her rent and
25 was having trouble. She is working a job trying to make

1 ends meet, and advised that Mr. Folks does, I think, try
2 to pay the cable bill but wasn't helping with rent.
3 Again, she was behind, and she advised that when he was
4 released from jail last year, she gave him \$500 to
5 purchase clothes, I believe it was. So she's, you know,
6 supporting him more than he is supporting her.

7 Q Now, I would like to turn your attention to another
8 facet of the investigation. Have you -- as part of your
9 role in this investigation, have you reviewed a report
10 of -- relating to a source of information, a source who
11 provided information in December of 2015?

12 A I have.

13 Q And can you share with us what, if anything, that
14 source of information stated about Mr. Folks' use of
15 firearms?

16 A Mr. Folks has a couple people working for him in
17 his organization at that time, and this source advised
18 that he would purchase drugs -- or, excuse me, purchase
19 guns for those individuals and for himself, and this
20 source witness states straw purchase in Milton.

21 Q And as you sit here today, do you recall where that
22 straw purchase took place?

23 A It was -- Mr. Folks identified the weapon that he
24 wanted this individual to purchase for him, and then --
25 then the individual went in and purchased the handgun

1 for him in Milton, Vermont. I don't remember the name
2 of the store that the weapon was purchased from.

3 Q And would seeing a copy of the report that you
4 reviewed refresh your recollection?

5 A Yes.

6 MS. ROSS: Your Honor, may I approach the
7 witness?

8 THE COURT: Sure.

9 Could you clarify something. The witness testified
10 that the source of information witnessed the straw
11 purchase, but then it appears that the source conducted
12 the straw purchase. I am confused by the testimony.

13 MS. ROSS: Okay. I will clarify that,
14 your Honor.

15 BY MS. ROSS:

16 Q Agent, if you could take a moment to take a look at
17 the report, which has been marked for identification as
18 Government Exhibit 3, a copy of which has been provided
19 to the defense, and if you would -- if you wouldn't
20 mind, once you have had an opportunity to do that, let
21 me know if you can tell us where this straw purchase
22 took place.

23 A The straw purchase took place at Bob's Gun Shop in
24 Milton, Vermont, and the witness witnessed -- or the
25 informant witnessed someone else purchase it, was

1 present when that individual purchased it.

2 Q And does the report refresh your recollection about
3 who -- the name of the person who made the purchase for
4 Mr. Folks?

5 A The individual that actually made the purchase was
6 Eric -- do not know the last name, but it's the
7 boyfriend of Keisha Willard/Willer.

8 Q Okay. And for how much was the gun purchased?

9 A \$400.

10 Q And according to the source of information, who
11 provided that money?

12 A Mr. Folks.

13 Q Now, did the source of information provide any
14 other information about firearms with respect to
15 Mr. Folks?

16 A I'm sorry. Could you repeat the question, please.

17 Q Yes.

18 Did the source provide any other information about
19 firearms with respect to Mr. Folks?

20 A Yes. That along with the gun, there was two clips
21 and ammunition provided as well, and that this
22 individual also said that he has provided weapons to the
23 individuals that worked for him.

24 Q And as you sit here today, can you recall the names
25 of the two individuals who worked for Mr. Folks to whom

1 the source said he provided weapons?

2 A One is identified as "G," and Shea, street names of
3 "G" and Shea.

4 Q Okay.

5 A Excuse me. And Raj. Excuse me.

6 Q Now, with respect to what the source observed with
7 respect to firearms and these individuals who worked for
8 Mr. Folks, what did the source say?

9 A I'm sorry. Can you repeat the question, please?

10 Q Sure. Absolutely.

11 So what did the source say about these individuals
12 in terms of their possession of firearms?

13 I can ask it a different way.

14 A Please.

15 Q Did she specify or did the source explain where the
16 firearms came from?

17 A They came from Mr. Folks.

18 Q Okay.

19 A Not specifically location where he had purchased
20 them, but they came from Mr. Folks.

21 Q Okay.

22 MS. ROSS: Those are all the questions I have
23 for Agent Destito at this time.

24 THE COURT: Okay.

25 MR. STRAUB: Thank you, your Honor.

1 THE COURT: Yes.

2 CROSS EXAMINATION

3 BY MR. STRAUB:

4 Q Okay. Sir, as I understand it, you were not
5 present for the situation in December that involved
6 Mr. Folks being stopped in an automobile and the search
7 of that vehicle?

8 A No, I was not.

9 Q Nor were you present for this interview of that
10 source of information that you are referring to in
11 December of 2015, correct?

12 A No, I was not.

13 Q Do you know the name of that source of information?

14 A Yes.

15 Q What is it, please?

16 MS. ROSS: Objection, your Honor. We are at
17 this time -- pursuant even to the rules of discovery and
18 the local rules, we would be entitled to keep certain
19 names -- not disclose certain names to the defense for
20 fear of the witness's safety, and we have that situation
21 in this case.

22 THE COURT: It did --

23 MR. STRAUB: Well --

24 THE COURT: Go ahead.

25 MR. STRAUB: Briefly, Judge. I'm dealing with

1 third-hand hearsay through this officer about a source
2 of information providing some difficult information
3 about my client, allegedly. I don't know how to cross
4 examine on -- I will ask some questions about what this
5 officer knows about that source of information and her
6 criminal history, but without the name, basically I am
7 not able to access whatever information I might be able
8 to access except through this officer to cross examine
9 anyone on this information.

10 THE COURT: Okay. At this point in time I am
11 going to sustain the objection. I am not going to
12 require the government to disclose the name, but I am
13 going to put great weight behind your argument that what
14 credence to give to an anonymous witness who -- for whom
15 we don't know what their criminal history is, what their
16 history of substance abuse may be. There's so many
17 things we don't know about this individual, and I'll
18 accept your argument in that regard.

19 MR. STRAUB: Thank you.

20 BY MR. STRAUB:

21 Q Sir, do you have a copy of the Government's Exhibit
22 1 in front of you, or just 3?

23 A Just 3.

24 Q But I understand that you reviewed the report
25 regarding the ammunition that was found in the car that

1 you have been discussing?

2 A I have not shared that exhibit.

3 Q Perhaps I misunderstood your testimony earlier.

4 What was your testimony about what form of gun or
5 ammunition was found in the vehicle?

6 A If you are referring to the -- the traffic stop, is
7 that Exhibit 1? Oh, I wasn't sure what you were
8 referring to. There was a nine millimeter handgun.

9 Q You sure it wasn't just a magazine and some rounds
10 of ammunition?

11 A I might be referring to a different report. May I
12 review it, please?

13 Q What report are you referring to?

14 A I don't know what exhibit number it is.

15 Q What report did you review about that incident?

16 A The traffic stop.

17 Q What form of report was it? Was it an incident
18 report? Was it an affidavit of probable cause? Do you
19 remember what the document was?

20 A An incident report.

21 Q And was it simply -- then I would like to show you
22 what's been marked as -- for identification as
23 Government's Exhibit 1, if I may.

24 A Thank you.

25 Yes. Thank you.

1 Q Does that appear to be the document that you
2 reviewed?

3 A Yes.

4 Q I refer you to Bates stamp 131 of that document,
5 the right. Does that appear to be the page? Does that
6 appear to be describing the ammunitions that were found
7 in the vehicle?

8 A This says, yes, a Beretta magazine and 10 nine
9 millimeter rounds.

10 Q And what is a Beretta magazine?

11 A It's a magazine that holds ammunition for a Beretta
12 handgun.

13 Q Okay. The property description does not describe
14 that a handgun was found, does it? Is there another
15 page and --

16 A Yes, I believe it's on the page before that, before
17 the one that you pointed out. It says model 92 FS nine
18 millimeter handgun.

19 THE COURT: Can I have some clarity here?
20 What is this document?

21 MR. STRAUB: Judge, I'm sorry, perhaps I'll
22 just let the witness identify.

23 Can you identify what this packet of documents is
24 marked as Government's Exhibit 1?

25 THE WITNESS: Your Honor, it's a -- it's a

1 series of reports generated from the traffic stop of
2 that evening.

3 THE COURT: Prepared by whom?

4 THE WITNESS: The officers that were involved,
5 your Honor. There was a couple officers involved.

6 THE COURT: And they were who?

7 THE WITNESS: Officer Bolio from Essex, and
8 I'm -- I'm --

9 MR. STRAUB: If I could perhaps help.

10 BY MR. STRAUB:

11 Q Officer Bolio conducted the traffic stop?

12 A Initially, yes.

13 Q Yes. And the property -- who conducted the search
14 of the vehicle?

15 A I don't know. The vehicle was taken back, and I
16 don't know who conducted the search. Corporal Dewey
17 was, I believe, with the K-9 handler, and
18 officer -- it's a Polish last name, your Honor, that I
19 won't -- I'm not going to try to pronounce. It's
20 C-Z- --

21 Q Czuzuski?

22 A Czuzuski. It's a "ski"? There's no -- I don't see
23 the "ski" at the end of it. Sorry. And then Officer
24 Lopez as well.

25 Q Do you know who -- do you know whether the entry of

1 the gun being found in here was made by an officer or
2 some sort of administrative assistant or where that
3 information came from?

4 A I don't know how the PD conducts their entries.

5 Q You don't know who conducted the search?

6 A Officers.

7 Q You know whether that search was pursuant to a
8 warrant?

9 A Yes.

10 Q Have you reviewed that warrant?

11 A I have not.

12 Q Turning briefly back to the source -- confidential
13 source of information you were discussing earlier.

14 A Yes.

15 Q That -- the statements made by that individual were
16 made to -- in a proffer session, an interview with a
17 special agent, a task force officer and a couple of U.S.
18 Attorneys, correct?

19 A Yes.

20 Q Do you know whether that individual was charged
21 with a crime?

22 A I do not. It's an ongoing investigation. I
23 don't -- I don't know whether that individual will be
24 charged yet or not.

25 Q Thank you.

1 THE COURT: Were any promises, offers, rewards
2 or inducements made to this individual to make these
3 statements?

4 THE WITNESS: Your Honor, I wasn't there for
5 this proffer but that's the standard practice. I would
6 say that there were not.

7 THE COURT: Okay. Miss Ross, were any offers,
8 rewards, promises or inducements made to this individual
9 at the time of the making of these statements?

10 MS. ROSS: They were not, your Honor. As the
11 report also details, that defense counsel has a copy of,
12 this individual is a heroin user and heroin addict.

13 THE COURT: Okay.

14 MS. ROSS: I believe she has a minimal
15 criminal history. I am having that brought upstairs for
16 defense counsel's review.

17 THE COURT: Okay.

18 MR. STRAUB: Thank you.

19 BY MR. STRAUB:

20 Q Now, as I have understood your testimony, this
21 individual reports that she believes that Mr. Folks gave
22 an individual some money to buy a gun last summer.
23 Correct?

24 A Yes.

25 Q She also states that she believes that all the guns

1 she saw at some location belonged to Mr. Folks, correct?

2 A Yes.

3 Q Paragraph seven.

4 A Yes.

5 Q Okay. So -- but that individual didn't say that
6 she had any, you know, basis for that belief. It's --
7 the report states that it was a belief on this
8 individual's part, correct?

9 A Correct.

10 Q Not that she had any knowledge about where all
11 those other guns -- who they belonged to or where they
12 came from.

13 A The other guns, I don't know from this report.
14 Just the straw purchase that she was present for.

15 Q Now, turning to your interview of Cassandra Folks
16 last week, did you generate any form of report or
17 statement regarding that interview?

18 A That's in the process of being generated.

19 Q Have you put, as we used to say, pen to paper yet?
20 Any form of a draft of that report exist anywhere?

21 A It's not complete yet.

22 MR. STRAUB: Your Honor, I'd ask that that
23 report be produced in whatever form it's in at the
24 moment, because it seems to go to some issues around the
25 stability of our proposed residence.

1 THE COURT: Are there any notes?

2 THE WITNESS: I have notes, your Honor.

3 THE COURT: Okay. I think it would be
4 appropriate to disclose the notes to --

5 MR. STRAUB: Thank you.

6 THE COURT: Okay.

7 MS. ROSS: Your Honor, I have no problem
8 disclosing the notes and will -- if we have an
9 opportunity to take a break, we will have those brought
10 over. I would point out, my understanding is that the
11 primary notetaker and the author of the report, whenever
12 it's prepared, is somebody with DEA, not Agent Destito.
13 So I just wanted to be clear about that.

14 THE COURT: So you have no notes of your own?

15 MS. ROSS: No. I'm sorry.

16 THE WITNESS: I do, your Honor.

17 MS. ROSS: He has some notes. I don't mean to
18 suggest he doesn't.

19 THE COURT: Okay.

20 MS. ROSS: It's just that he is not the author
21 of the report.

22 THE COURT: Okay.

23 MS. ROSS: And we will, like I said, have
24 those notes of Agent Destito's brought over.

25 THE COURT: Okay.

1 MR. STRAUB: Thank you. Well, then, Judge, at
2 this point I would have no further questions but would
3 reserve an opportunity to look at those notes and follow
4 up.

5 THE COURT: Okay.

6 MR. STRAUB: Thank you.

7 THE COURT: I want to ask the witness some
8 clarifying questions.

9 You referenced a traffic stop as the vehicle being
10 registered to Miss Crawford. Who is Miss Crawford?

11 THE WITNESS: An associate of Mr. Folks's.

12 THE COURT: What do you mean "an associate"?

13 THE WITNESS: Someone that he is -- worked
14 with.

15 THE COURT: And did any -- was Ms. Crawford
16 asked about the -- either the nine millimeter handgun or
17 the magazine that was discovered in the car?

18 THE WITNESS: I don't know, your Honor.
19 She -- those were discovered after their interview with
20 her.

21 THE COURT: I see. And what was discovered in
22 the car?

23 THE WITNESS: A handgun.

24 THE COURT: All right. Did you participate --
25 you testified about the source of information. Did you

1 participate in that interview?

2 THE WITNESS: I did not, your Honor.

3 THE COURT: Okay. And did you participate in
4 the arrest of the defendant?

5 THE WITNESS: No, your Honor. I was
6 conducting a search at -- at his -- at the residence.

7 THE COURT: And do you know anything about the
8 arrest of the defendant, with particular reference to
9 whether or not any weapons, drugs or other evidence was
10 discovered incident to that arrest?

11 THE WITNESS: I don't believe any weapons were
12 found, your Honor.

13 THE COURT: Any drugs?

14 THE WITNESS: I don't know, your Honor.

15 THE COURT: Are you aware of what Mr. Folks's
16 demeanor was? Was he cooperative?

17 THE WITNESS: He spoke with the investigators,
18 your Honor.

19 THE COURT: Okay. All right. Any follow-up
20 based on my questioning?

21 MR. STRAUB: Yes, Judge.

22 THE COURT: Okay.

23 MR. STRAUB: Briefly. Thank you.

24 CONTINUED CROSS EXAMINATION

25 BY MR. STRAUB:

1 Q The Court asked about Ms. Crawford, and you
2 described her as an associate of Mr. Folks. What's the
3 basis of your knowledge -- well, let me ask it this way:
4 You are calling Miss Crawford an associate of Mr. Folks
5 because that confidential informant provided that
6 information, correct?

7 A Among other things.

8 Q Do you have -- all the information that you have
9 about Miss Crawford being -- well, I'm sorry. If you
10 could --

11 So you are saying that besides that confidential
12 informant identifying Crawford as an associate of
13 Mr. Folks, you have other information that suggests
14 that?

15 A Yes.

16 Q And the -- well, what other information do you
17 have?

18 A That he was familiar with Mrs. -- Miss Crawford and
19 that he has been to her house and was -- frequent her
20 residence.

21 Q And what are the source's -- and where is your
22 source of information for that, in what you just
23 described?

24 A The other defendant mentioned that he had been to
25 her house before.

1 Q When did the defendant mention that?

2 A Following her arrest.

3 Q Following his arrest?

4 A Her arrest.

5 Q Her arrest. Which defendant mentioned that before?

6 I'm sorry. I'm --

7 A Miss Latulippe.

8 Q Miss Latulippe, okay. So Ms. Latulippe said that

9 Mr. Folks had been to Crawford's residence?

10 A Yes.

11 Q And Mr. Folks said he was driving Ms. Crawford's

12 car and, in fact, the car was registered to her,

13 correct?

14 A Yes.

15 Q Other than Ms. Latulippe's statement that he had

16 been to the residence before and the information that he

17 provided that that stop in December he was driving her

18 car, is that -- are you referring to other information?

19 A Those two.

20 Q Those --

21 A Those two.

22 Q Those two.

23 MR. STRAUB: Okay. Thank you. Nothing

24 further.

25 THE COURT: Miss Ross?

1 MS. ROSS: Your Honor, I have no redirect. I
2 am wondering -- I am intending to call Agent Chetwynd as
3 well and wondering if your Honor would prefer that we
4 take a break now so that I can provide the defense
5 counsel with the notes and -- or at least get that in
6 process, getting him the notes and the criminal history
7 of the source of information as well as the statement of
8 the defendant, and then resume after a short break, or
9 would you like me to -- prefer that I call Agent
10 Chetwynd?

11 THE COURT: Jeff, what's our schedule?
12 (Brief pause.)

13 THE COURT: I have a hearing at two. Counsel,
14 do you want to finish this proceeding or what's your
15 preference?

16 MR. STRAUB: Judge, I have a bail hearing at
17 state court at 1:30.

18 THE COURT: Okay.

19 MR. STRAUB: And other matters in court later
20 in the afternoon.

21 THE COURT: All right.

22 MR. STRAUB: If I can have a moment to consult
23 with my client?

24 THE COURT: Sure, sure.
25 (Brief pause.)

1 MR. STRAUB: Judge, and to clarify, when the
2 government refers to the statement of the defendant, I
3 believe that that is a Facebook video, not any other
4 form of recorded statement? Would you like to clarify
5 that?

6 MS. ROSS: No. You had raised in -- the
7 defense counsel had raised in its argument that it
8 disputed that the defendant had stated that he was "the
9 muscle" for other drug traffickers, which is in the
10 government's detention motion. The government has now
11 had brought over the defendant's recorded interview, and
12 that's what I am referring to as -- as making available
13 to the defense and putting on in court. It is separate
14 from the Facebook video.

15 MR. STRAUB: May I ask the government about
16 how long that statement is so I can try and figure out
17 how long I need to review it?

18 MS. ROSS: If I could have a minute, please?

19 MR. STRAUB: Does the Court know -- I'm sorry.
20 (Brief pause.)

21 MS. ROSS: I'm told the entire statement is
22 over an hour and that the statement -- the best estimate
23 is that the statements about muscle occur in the first
24 five to 10 minutes.

25 MR. STRAUB: Obviously I need to review the

1 entire statement, your Honor.

2 THE COURT: Yes, you do. Okay.

3 All right. Well, you have to be in state court at
4 1:30; is that correct?

5 MR. STRAUB: Yes, Judge.

6 THE COURT: All right. So I think it's
7 prudent that we continue this matter until tomorrow. If
8 you have got a statement of your client that's over an
9 hour long, you're going to need to review it.

10 MR. STRAUB: Yes, Judge. I have to note,
11 Judge, that I am scheduled to be in a full-day hearing
12 tomorrow in state court starting at 8:30 through 4:30.

13 THE COURT: All right. How's Wednesday
14 morning?

15 (Brief pause.)

16 THE COURT: All right. This matter's going to
17 be continued until Wednesday at 3:30 for further
18 evidentiary proceedings in relation to the government's
19 motion for pretrial detention.

20 Are you available, Mr. Straub?

21 MR. STRAUB: Yes, Judge. That's perfect.
22 Thank you.

23 THE COURT: Okay. All right. All right, the
24 Court will stand in recess. Mr. Folks is under a
25 temporary order of detention pending the Court's

1 decision on this motion.

2 (Court was in recess at 12:47 p.m.)

3 *** ** ***

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5
6 C E R T I F I C A T I O N

7 I certify that the foregoing is a correct
8 transcript from the audio record of proceedings in the
above-entitled matter.

9 

10 May 5, 2017
11 Date

Anne Nichols Pierce
Anne Nichols Pierce

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